UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-4561

DIVISION OF
CORPORATION FINANCE

February 16, 2012

Cynthia A. Nastanski
PepsiCo, Inc.
Cynthia.Nastanksi@pepsico.com

Re: PepsiCo, Inc.
Incoming letter dated January 3, 2012

Dear Ms. Nastanski:

This is in response to your letter dated January 3, 2012 concerning the shareholder proposal submitted to PepsiCo by Betsy Krieger. We also have received a letter on the proponent's behalf dated January 25, 2012. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Ted Yu
Senior Special Counsel

Enclosure

cc: Sanford J. Lewis
sanfordlewis@gmail.com

February 16, 2012

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: PepsiCo, Inc.
Incoming letter dated January 3, 2012

The proposal requests that PepsiCo establish a risk oversight committee of the board of directors.

We are unable to concur in your view that PepsiCo may exclude the proposal under rule 14a-8(i)(7). In our view, the proposal focuses on the significant policy issue of the board's role in the oversight of the company's management of risk and does not seek to micromanage the company to such a degree that exclusion of the proposal would be appropriate. Accordingly, we do not believe that PepsiCo may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

Erin E. Martin
Attorney-Advisor

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.

SANFORD J. LEWIS, ATTORNEY

January 25, 2012

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Shareholder Proposal to PepsiCo to Establish a Board of Directors Risk Oversight Committee submitted by Betsy Krieger

Ladies and Gentlemen:

Betsy Krieger (the "Proponent") is the beneficial owner of common stock of PepsiCo (the "Company") and has submitted a shareholder proposal (the "Proposal") to the Company. We have been asked by the Proponent to respond to the letter dated January 3, 2012, sent to the Securities and Exchange Commission Staff (the "Staff") by the Company. In that letter, the Company contends that the Proposal may be excluded from the Company's 2012 proxy statement by virtue of Rule14a-8(i)(7).

We have reviewed the Proposal, as well as the letter sent by the Company, and based upon the foregoing, as well as the aforementioned Rules, it is our opinion that the Proposal must be included in the Company's 2011 proxy materials and that it is not excludable by virtue of Rule 14a-8(i)(7).

Pursuant to Staff Legal Bulletin 14D, a copy of this letter is being e-mailed concurrently to Cynthia A. Nastanski, PepsiCo.

SUMMARY

The Proposal, in its resolved clause, very simply requests that the company "establish a risk oversight committee of the Board of Directors." It neither specifies what issues the committee must address, nor requires the committee to issue a report. As such, this Proposal is in strict adherence to Staff Legal Bulletin 14E, which provided that a shareholder proposal on risk governance would not be treated as ordinary business.

ANALYSIS

The Proposal is not excludable as relating to Pepsico's ordinary business operations because it addresses a significant policy issue (risk oversight) and it does not micromanage.

The Company argues that the Proposal violates 14a-8(i)(7) because it pertains to matters directly relating to PepsiCo's ordinary business operations.

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Staff Legal Bulletin 14E is directly applicable to nonexclusion of the current Proposal.

In Staff Legal Bulletin 14E, October 27, 2009, the Staff reversed its prior position that treated as excludable ordinary business all resolutions relating to "risk evaluation." Under the new Staff policy, if the subject matter of the resolution relates to a significant social policy issue, then the fact that the resolution asks for evaluation of risks will not be a basis for exclusion. **The issue of risk governance was also identified as a significant policy issue**. The bulletin stated:

> In addition, we note that there is widespread recognition that the board's role in the oversight of a company's management of risk is a significant policy matter regarding the governance of the corporation. In light of this recognition, a proposal that focuses on the board's role in the oversight of a company's management of risk may transcend the day-to-day business matters of a company and raise policy issues so significant that it would be appropriate for a shareholder vote.

The Company acknowledges that Staff Legal Bulletin 14E had established the principle that "the board's role in the oversight of a company's management of risk," could itself be a transcendent social policy issue precluding exclusion. The Company attempts to assert that the current Proposal goes beyond what is contemplated by SLB 14E.

The Company cites Western Union (March 14, 2011) as a relevant precedent. It contained a similar shareholder proposal. The notable difference between the current proposal and the present proposal is that the Western Union proposal requested that the risk oversight committee issue a report.

The Company states that it does not believe that the omission of the report requirement makes the current proposal distinguishable. However, quite to the contrary, in a meeting of Rule 14a-8 stakeholders with Division of Corporation Finance Staff on July 15, 2011, a representative of the Division staff expressly stated that the only risk governance proposal found to be excludable in 2011 was excluded because it included the requirement for a report. The implication of the discussion was that a pure risk oversight/governance proposal which does not include the report requirement would not be found to be similarly excludable. Contrary to the Company's comment asserting that the Western Union decision turned on "the fact that the proposal sought assessment of risks that related to ordinary business matters" the information presented by staff in the July 15 meeting was that the defect in the proposal was the requirement for a report.

Viewing the SLB language in the context in which it was written, it is apparent that defining the scope of a board committee's oversight, and ensuring accountability to the shareholders, would be precisely the kinds of governance approach that one would anticipate in such proposals.

At the time of the Staff Legal Bulletin, Sen. Charles Schumer had pending legislation, the "Shareholder Bill of Rights Act," which would, among other things, require every registrant to "establish a risk committee, comprised entirely of independent directors, which shall be responsible for the establishment and evaluation of the risk management practices of the issuer."

The issue of whether boards of directors should establish separate risk committees continues to

garner debate and discussion. For instance, a recent post from the publication Board Member discusses how audit committees and risk committees have fundamentally different orientations, with Audit Committee tending towards a "control and verification function" while a Risk Committee, properly formed, "brings a strategic perspective to the discussion of risk."[1] The implication seems to be that if a firm wants a more strategic approach to risk, it may need the benefit of a separate Risk Committee.

Similarly, Nixon Peabody published an article on "The Role and Construction of Risk Committees," August 11, 2011[2], which discusses how a risk committee can best be configured to avoid duplication of efforts and ensure its maximum effectiveness. The article details a number of considerations that could lead a board to conclude that a separate risk committee should be established, including:

- Setting the tone for a corporate culture of risk management;
- Increasing the overall level of Enterprise Risk Management;
- Additional expertise in managing operational risks;
- Additional devotion to risk oversight without significantly increasing responsibilities of the entire board;
- Having directors maintain a continuous view of risks;
- Increasing communication processes regarding risks.

These are relevant considerations for a board making the decision to have a separate risk committee, they are also germane to shareholder deliberation on this important question. And these considerations have societal implications for how well risk is managed by companies like PepsiCo.

There are many examples of shareholder proposals which have sought to allocate particular issues to a newly established board committee, and which have not been found by the Staff to be excludable as a matter of ordinary business. See, for instance, *Pulte Homes, Inc.* (February 27, 2008) requesting that the board establish a committee of outside directors to oversee the development and enforcement of policies and procedures to ensure that the loan terms and underwriting standards of nontraditional mortgage loans are consistent with prudent lending practices; *Bank of America* (February 29, 2008) seeking to amend the by-laws to establish a board committee to review the implications of company policies for human rights of individuals in the U.S. and worldwide.

The public policy debate regarding board level oversight of risk has focused heavily on the arguments for moving risk oversight out of audit committees, which is exactly the issue at PepsiCo. The KPMG Audit Committee Institute has implied that **the current placement of the demanding job of risk oversight in board audit committees seems to be misplaced**. In its list of "Ten To-Do's for Audit Committees in 2010" one of the 10 points is:

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[1] http://www.boardmember.com/Audit-Committees-Monitor-Control-Functions-Risk-Committees-Provide-Oversight-of-a-Strategic-Function.aspx?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+latest-content+%28Recently+Posted+-+Boardmember.com%29

[2] http://nhdd.com/publications_detail3.asp?ID=3440&NLID=13

> Rethink the audit committee's role in risk oversight-with an eye to narrowing the scope. The tremendous focus on risk today-and the SEC's new rules requiring disclosures about the board's role in risk oversight-is an opportunity for the board to reassess the role of the audit committee (and the full board and the other standing committees) in overseeing risk. Does the audit committee have the expertise and time to deal with strategic, operational, and other risks? Is the expertise of other board members being leveraged? Audit committees already have a lot on their plates with oversight of financial reporting risks.

Within the community of board directors themselves, there is growing diversity of opinion about whether to split audit and risk oversight into separate committees. A series of confidential interviews conduction by Spencer Stuart with audit and risk committee chairs of leading multinationals delves into this in depth in a 2010 article.[3] One director said that the more a business is dependent upon proactive taking of risk in a dynamic way, the more likely it is better served by a risk committee separate from audit.

There is good reason to believe that PepsiCo is a candidate for a separate board committee on risk governance. As noted in the resolution the Company currently relies on the Audit Committee to undertake dozens of tasks, and the oversight of risks is virtually lost in and among those tasks. Audit committee duties including appointing the accounting firm to independently audit the Company and managing that firm's services, reports, and procedures, assessing the qualifications of the independent audit firm, its lead audit partners and team, assuring that the Securities and Exchange Act of 1934 has not been violated, and confirming the accuracy of the Company's internal accounting procedures. In addition to these vast responsibilities, the Audit Committee is currently also charged with risk oversight.

It is reasonable and appropriate for shareholders to probe the management of risks by the Company, and to encourage the Board to establish a separate governance process to ensure more priority to oversight of risks.[4]

The Proposal does not micromanage the Company.

Some of the Company's arguments seem to imply that the Proposal micromanages the activities of the Board or management. Under Rule 14a-8(i)(7), the Commission has indicated that shareholders, as a group, are not in a position to make an informed judgment if the "proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." Exchange Act Release No. 34-40018 (May 21, 1998) ("1998 Interpretive Release") Such micro-management may occur where the proposal "seeks intricate detail, or seeks specific time-frames or methods for implementing complex policies." As such, the present Proposal with its simple request for a risk oversight committee does not micromanage action by the Board or by the

[3] http://www.spencerstuart.com/research/articles/1471/

[4] Notably, the company did not argue that the Proposal is "substantially implemented" by the work of the Audit Committee. It is quite apparent from the Company response that the current shareholder proposal seeks a Committee to engage in more rigorous oversight of risk, and certainly with greater accountability to shareholders, than is addressed by the Audit committee.

Company.

The fact that the whereas clauses statement of the proposal specifically names some of the risks of concern to the proponent does not render the proposal excludable. Indeed, the proposal does not direct the Company to address any particular risks in the course of its oversight process.

Risk oversight is a significant policy issue and appropriate shareholder concern at PepsiCo, not excludable as relating to ordinary business.

Because risk oversight is a significant policy issue for this company, the request for creation of a board committee on risk oversight is not excludable as an ordinary business matter. The importance of the issue of risk governance as a significant policy issue for PepsiCo is demonstrated by numerous recent developments which collectively raised the question about the degree of involvement of the Board in overseeing key risks that the Company faces.

– The first risk factor identified in the Company's Form 10-K, February 18, 2011, is that "***Demand for our products may be adversely affected by changes in consumer preferences and tastes or if we are unable to innovate or market our products effectively.***" Since then, the Company has lowered its profit outlook twice, blaming higher commodity costs and a "difficult" consumer environment. Controversy among investors has escalated regarding the Company's consumer risk strategy, especially whether the Company should focus increasingly on healthier products which may ensure long-term growth as more consumers shy away from sugary drinks and salty snacks, or whether it should stick with its better performing snacks business.[5]

– The second risk factor identified in the Company's Form 10-K, February 18, 2011, is that "***Any damage to our reputation could have an adverse effect on our business, financial condition and results of operations.***" The Company faces significant reputation risk as a result of series of controversies. For instance:

- Consumer groups ("Center for Digital Democracy, Consumer Watchdog, Consumer Action and the Praxis Project") filed a complaint against the PepsiCo and its Frito-Lay subsidiary, claiming that the companies are engaging in "engaging in deceptive and unfair digital marketing practices in violation of Section 5 of the FTC Act" that targeted at adolescents.[6]

- A high-profile documentary on CNBC, titled "Pepsi's Challenge" premiered November 10, 2011. It focused on charges of food industry critics that PepsiCo and its subsidiaries, including Frito-Lay, are peddling junk foods that are helping to increase the childhood obesity rate in America.

- On January 16, 2012, a Wall Street Journal article indicated that the Company had found traces of an unapproved fungicide, carbendazim, in its keystone brand, Tropicana orange juice. Although the company said the levels don't raise government safety concerns, the

[5] "Board Stands by Pepsi CEO," Wall Street Journal, 1/16/12.
[6] New York Times http://nyti.ms/sxdHkI, Consumer group press release: http://bit.ly/u7XpI5.

detected levels apparently have brought greater government scrutiny to orange juice products, and the announcement affected prices of orange juice futures.[7]

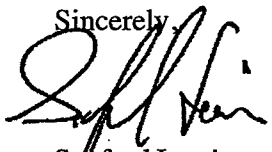
The Proponent believes that these and other issues (e.g., reduced credit ratings for PepsiCo) substantially demonstrate that risk governance is a significant policy issue for PepsiCo, and that there is a need for the Board to exercise greater oversight of risk management within the Company. As such, the Proposal is not excludable as relating to ordinary business.

Conclusion

As demonstrated above, the Proposal is not excludable under the asserted rules. Therefore, we request the Staff to inform the Company that the SEC proxy rules require denial of the Company's no-action request the proponent respectfully request an opportunity to confer with the Staff.

Please call me at (413) 549-7333 with respect to any questions in connection with this matter, or if the Staff wishes any further information.

Sincerely,



Sanford Lewis
Attorney at Law

cc: Betsy Krieger
Cynthia A. Nastanski, PepsiCo.
Amy Carriello, Senior Legal Director, PepsiCo.

[7] "Pepsi Finds Fungicide Traces in Tropicana Juice," Wall Street Journal, January 16, 2012.

Branscomb, Denise

From: Carriello, Amy {PEP} [Amy.Carriello@pepsico.com]
Sent: Tuesday, January 03, 2012 2:00 PM
To: shareholderproposals
Cc: Nastanski, Cynthia {PEP}; Elizabeth Ising (Eising@gibsondunn.com)
Subject: PepsiCo, Inc. Shareholder Proposal of Betsy Krieger
Attachments: Spepprt007412010313450.pdf

Please see the attached letter regarding the Shareholder Proposal of Betsy Krieger.

Regards,

Amy

Amy Carriello | Senior Legal Director
PepsiCo, Inc. | 700 Anderson Hill Road | Purchase, NY 10577
Tel. 914-253-2507 | Fax 914-249-8109 | amy.carriello@pepsico.com

PEPSICO

Cynthia A. Nastanski
Senior Vice President, Corporate Law and
Office of the Corporate Secretary

January 3, 2012

VIA E-MAIL

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *PepsiCo, Inc.*
Shareholder Proposal of Betsy Krieger
Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that PepsiCo, Inc. (the "Company") intends to omit from its proxy statement and form of proxy for its 2012 Annual Meeting of Shareholders (collectively, the "2012 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof (the "Supporting Statement") submitted by Betsy Krieger (the "Proponent").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2012 Proxy Materials with the Commission; and

- concurrently sent a copy of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

 700 Anderson Hill Road, Purchase, NY 10577 Bus: 914-253-3271 Fax: 914-249-8109

THE PROPOSAL

The Proposal states: "RESOLVED: Shareholders request that the company establish a Risk Oversight Committee of the Board of Directors." The Supporting Statement enumerates certain risks that such a committee would address, including risks set forth in the Company's Form 10-K for the fiscal year ended December 25, 2010, and "other risks, such as problems regarding bottled water quality." A copy of the Proposal, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2012 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations.

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Deals With Matters Relating To The Company's Ordinary Business Operations.

A. Background

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that "deals with a matter relating to the company's ordinary business operations." According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" refers to matters that are not necessarily "ordinary" in the common meaning of the word, but instead the term "is rooted in the corporate law concept of providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual meeting," and it identified two central considerations that underlie this policy. The first was that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The second consideration related to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

Regarding the first of these two considerations, the 1998 Release states that "proposals relating to [ordinary business] matters but focusing on sufficiently significant social policy issues . . . generally would not be considered to be excludable, because the proposals would

transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote."

The Staff explained in Staff Legal Bulletin No. 14E (Oct. 27, 2009) ("SLB 14E") how it applies the above principles to proposals relating to risk:

> [W]e will . . . focus on the subject matter to which the risk pertains or that gives rise to the risk. . . . [S]imilar to the way in which we analyze proposals asking for the preparation of a report, the formation of a committee or the inclusion of disclosure in a Commission-prescribed document—where we look to the underlying subject matter of the report, committee or disclosure to determine whether the proposal relates to ordinary business—we will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company. . . .
>
> In addition, we note that there is widespread recognition that the board's role in the oversight of a company's management of risk is a significant policy matter regarding the governance of the corporation. In light of this recognition, a proposal that focuses on the board's role in the oversight of a company's management of risk may transcend the day-to-day business matters of a company and raise policy issues so significant that it would be appropriate for a shareholder vote.

Consistent with SLB 14E, the Staff has continued to concur in the exclusion of shareholder proposals seeking risk assessments when the subject matter concerns ordinary business operations. *See, e.g., Pfizer Inc.* (avail. Feb. 16, 2011) (concurring in exclusion under Rule 14a-8(i)(7) of a proposal requesting an annual assessment of the risks created by the actions the company takes to avoid or minimize U.S. federal, state and local taxes and provide a report to shareholders on the assessment); *TJX Companies, Inc.* (avail. Mar. 29, 2011) (same); *Amazon.com, Inc.* (avail. Mar. 21, 2011) (same); *Wal-Mart Stores, Inc.* (avail. Mar. 21, 2011) (same); *Lazard Ltd.* (avail. Feb. 16, 2011) (same).

In the present case, the Proposal "request[s] that the company establish a Risk Oversight Committee of the Board of Directors," which the Supporting Statement indicates should oversee risks including various risks related to the Company's ordinary business operations. We believe the Proposal is excludable under Rule 14a-8(i)(7) because of this aspect relating to the Company's ordinary business operations.

B. No-Action Letter Precedent

In *Western Union Co.* (avail. Mar. 14, 2011), the Staff concurred with the exclusion of a proposal that is substantially similar to the Proposal. The *Western Union* proposal began with a "Whereas" section that:

- enumerated various risks that had been identified in the company's Form 10-K, including "[d]eterioration of consumer confidence in our business providers," the possibility that economic conditions could negatively impact the company's customer base and the potential for increased competition;

- observed that "[t]hese and other risks could negatively impact our Company's reputation and operations"; and

- stated that the company's "Audit Committee has nearly 40 different duties," including appointing the company's auditor and assessing the company's risk exposures.

Following the "Whereas" section was a "Resolved" section, which requested that the company "establish a risk committee of the Board of Directors, for oversight of risk management." The "Resolved" section also requested that the committee periodically report to shareholders on "the company's approach to monitoring and control" of certain risk exposures, "including those identified in the 10-K." The *Western Union* proposal concluded with a "Supporting Statement" section, which recommended that the risk committee reports describe how certain risk categories were being addressed.

The Staff, in a two-paragraph response letter, concurred that Western Union could exclude the proposal under Rule 14a-8(i)(7).

- The first paragraph consisted of a brief description of the proposal. It is important to note that in describing "[t]he proposal," the Staff referred not only to the proposal's "Resolved" section but also to its "Supporting Statement"; the response letter indicated, in part, that the proposal "recommends that the reports describe how 'an identified risk category . . . is being addressed.'"

- The second paragraph stated the Staff's decision. In accordance with SLB 14E, it indicated that "although the proposal requests the establishment of a risk committee, which is a matter that focuses on the board's role in the oversight of Western Union's management of risk, the proposal also requests a report that describes how Western Union monitors and controls particular risks." The Staff concluded that exclusion under Rule 14a-8(i)(7) was appropriate because "the underlying subject matters of these risks appear to involve ordinary business matters."

The Proposal is substantially similar to the *Western Union* proposal. Therefore, consistent with *Western Union*, we believe the Proposal may be excluded under Rule 14a-8(i)(7). Like the *Western Union* proposal, the Proposal begins with a "Whereas" section that:

- lists certain risks that were identified in the Company's Form 10-K, including risks relating to demand for the Company's products, damage to the Company's reputation, disruption in the Company's supply chain and the Company's financial performance;

- states that "[t]hese and other risks . . . could negatively impact our Company's reputation and operations"; and

- states that "the oversight of these risks is virtually lost among the dozens of tasks that the Board's Audit Committee must undertake" and points out that the Audit Committee charter contains four separate tasks relating to overseeing the Company's auditors but just one task relating to risk management.

The last paragraph of the "Whereas" section also states a belief that "these issues of risk oversight are of equal importance to the Audit Committee's work and therefore merit a separate Board committee, with focused attention and a detailed agenda of risk oversight." The Proposal concludes with a "Resolved" section, which "request[s] that the company establish a Risk Oversight Committee of the Board of Directors."

Therefore, like the *Western Union* proposal, the Proposal requests a board committee to oversee risk. Based on the Staff's response in *Western Union*, the Proposal's request for such a committee, by itself, does not render the Proposal excludable. However, like the *Western Union* proposal, the Proposal also emphasizes an expectation that the committee will assess the risks that were included in the Company's Form 10-K and listed at the beginning of the Proposal's "Whereas" section.

The Proposal's "Whereas" section lists the risks that were identified in the Company's Form 10-K, and it refers back to these risks multiple times and emphasizes a belief that "these risks" are not currently getting the attention that they need. In fact, the statement at the end of the "Whereas" section, that "these issues of risk oversight . . . merit a separate Board committee," indicates that the Proposal's driving purpose is to request a board committee that will address the risks that are identified at the beginning of the Proposal. Because the risks that are identified at the beginning of the Proposal relate to ordinary business matters for the Company, the Proposal is excludable, as was the *Western Union* proposal.

The Proposal differs from the *Western Union* proposal in two ways, but neither of these differences warrants a different outcome. First, the Proposal does not request a report. However, we do not believe that the *Western Union* proposal's request for a report impacted the outcome in *Western Union* because it is well established that when determining whether a proposal requesting the preparation of a report is excludable under Rule 14a-8(i)(7), the Staff "will consider whether the subject matter of the special report . . . involves a matter of ordinary business; where it does, the proposal will be excludable." Exchange Act Release

No. 20091 (Aug. 16, 1983); *see also Pfizer Inc.* (avail. Feb. 14, 2008) (concurring in the exclusion of a proposal to form a committee to study an issue even though the proposal did not request any report from the committee). Thus, the Staff's decision in *Western Union* must have rested on the fact that the proposal sought an assessment of risks that related to ordinary business matters, not on the proposal's request for a report on those risks. In this regard, the Proposal is similar to the proposal in *General Electric Co.* (avail. Jan. 7, 2005), which the Staff found to be excludable under Rule 14a-8(i)(7). The *GE* proposal described an incident in which one of the company's subsidiaries in Australia had allegedly acted unlawfully, and it instructed "the Board of Directors [to] review the management of the group's operations in Australia to ensure that actions harmful to the reputation of the company . . . do not recur." In concurring that the proposal could be excluded, the Staff noted in its response letter "that the proposal appears to focus on the review of an ordinary business matter." We believe the Proposal is most reasonably interpreted as requesting not only a Risk Oversight Committee but also, precisely like the *GE* proposal, a board-level review of the ordinary business items that are enumerated. The absence of a request for a report on the ordinary business items did not preclude exclusion in *GE* and therefore should not preclude exclusion here.

Second, as summarized in the following table, the placement of the requests made by the Proposal differs slightly from that of the *Western Union* proposal.

	***Western Union* Proposal**	**Present Proposal**
Request for committee	"Resolved" section	"Resolved" section
Request for report	"Resolved" section	N/A
Additional detail about the report's contents	"Supporting Statement" section	N/A
Identification of risks to be addressed	"Whereas," "Resolved" and "Supporting Statement" sections	"Whereas" section

The fact that the Proposal identifies the risks to be addressed only in the "Whereas" section and not also in the "Resolved" section should not result in a different outcome from *Western Union*. As discussed above, the Proposal makes clear the intention that the requested board committee address the ordinary business risks identified in the "Whereas" section. It asserts, in the sentence immediately preceding the "Resolved" section's request for the board committee, that "these issues . . . merit a separate Board committee." Staff precedent illustrates that when statements that are outside of a proposal's resolution are clearly intended to be part of the action requested by the proposal, they should be considered in the analysis under Rule 14a-8(i)(7). For example, in *Wal-Mart Stores, Inc.* (avail. Mar. 15, 1999) ("*Wal-Mart 1999*"), the staff concurred in the exclusion of a proposal that requested a report on various employee-rights issues. The "Supporting Statement" section of the proposal listed five specific items that the proponent "believe[d]" should be included in the report. The Staff concurred in the exclusion of the proposal and explicitly noted that one of

the five items listed in the "Supporting Statement" related to the company's ordinary business operations. In addition, as noted above, the Staff included portions of the "Supporting Statement" in its description of "[t]he proposal" in its *Western Union* response letter, suggesting that the Staff's decision hinged at least partially on language in the supporting statement.

Because the Proposal is substantially similar to the *Western Union* proposal, we believe the same outcome is warranted.

C. The Underlying Subject Matters Of The Risks Covered By The Proposal Relate To The Company's Ordinary Business Operations.

The subject matters of the risks covered by the Proposal relate to the Company's ordinary business operations. The assessment of and response to demand for the Company's products, damage to the Company's reputation, disruption in the Company's supply chain and the Company's financial performance are all customary and important responsibilities of management, and they are not proper subjects for shareholder involvement. The Company devotes significant time and resources to analyzing these risks and how to best minimize them. The Company believes it is impracticable for shareholders to decide how to address these issues at an annual meeting, and Staff precedent confirms that proposals on these topics are excludable under Rule 14a-8(i)(7). *See Comcast Corp.* (avail. Feb. 15, 2011) (concurring with the exclusion of a proposal to market and sell a particular type of wireless broadband product and noting that the proposal related to "the products offered for sale" by the company); *Duke Energy Corp.* (avail. Jan. 24, 2011) (concurring with the exclusion of a proposal to strive to purchase a very high percentage of "Made in USA" goods and services and noting that "the proposal relates to decisions relating to supplier relationships"); *Coca-Cola Co.* (avail. Feb. 17, 2010) (concurring in the exclusion of a proposal to publish a report discussing "policy options to respond to the public concerns . . . regarding bottled water" on the basis that the proposal related to "customer relations and decisions relating to product quality"); *International Business Machines Corp.* (avail. Jan. 6, 2005) (concurring with the exclusion of a proposal to offer customers "software technology that has greater simplicity" on the basis that the proposal related to "the design and development of IBM's software products"); *Rogers Corp.* (Jan. 18, 1991) (concurring with the exclusion of a proposal requesting the adoption of certain standards for financial performance on the basis that the proposal related to "the day-to-day financial operations of the Company").

The subject matters of the risks addressed by the Proposal are not limited to topics that are significant policy issues. In this respect, the Proposal differs from the proposals in *Wal-Mart Stores, Inc.* (avail. Mar. 28, 2011) and *General Electric Co.* (avail. Feb. 8, 2011), which requested that the board prepare a report disclosing the business risks related to climate change. The Staff in both letters noted that the proposals focused on the significant policy issue of climate change and were not excludable under Rule 14a-8(i)(7). As discussed

above, the risks covered by the Proposal have as their subject matters an array of issues relating to the Company's ordinary business operations.

The Proposal is also distinguishable from *Chevron Corp.* (avail. Mar. 28, 2011), in which the Staff did not concur in the exclusion of a proposal that requested the establishment of a board committee on human rights. Unlike the *Chevron* proposal, the Proposal is not limited to significant policy issues or to matters that are otherwise outside of the Company's ordinary business operations. To be clear, we do not believe that a proposal seeking a board risk committee has to avoid all mention of ordinary business issues to avoid exclusion. Rather, the Proposal is excludable because it not only mentions ordinary business issues but also seeks an assessment of the ordinary business risks that are identified. The Staff has long held that a proposal on an ordinary business matter does not avoid exclusion by surrounding the ordinary business matter with other components that are outside of ordinary business. *See Wal-Mart 1999*. Staff precedent also supports the exclusion of proposals that seek the establishment of a board committee and state various ordinary business issues that the committee should address. *See, e.g.*, *Central Federal Corp.* (avail. Mar. 8, 2010) (concurring in the exclusion of a proposal requesting the appointment of a committee to explore strategic alternatives for maximizing shareholder value because the proposal "relate[d] to both extraordinary transactions and nonextraordinary transactions"); *FedEx Corp.* (avail. July 14, 2009) (concurring in the exclusion of a proposal urging the establishment of a committee to prepare a report that discusses compliance with certain laws); *Western Union Co.* (avail. Mar. 6, 2009) ("*Western Union 2009*") (concurring in the exclusion of a proposal regarding the establishment of a board committee that would address such issues as consumer privacy and delivery of company services to lower-wage workers). Like the *Wal-Mart 1999* proposal, the Proposal includes a concept that is outside of ordinary business but also states in its Supporting Statement a "belie[f]" that certain matters of ordinary business should also be covered. The Proposal is therefore analogous to the proposals in *Central Federal*, *FedEx*, and *Western Union 2009*.

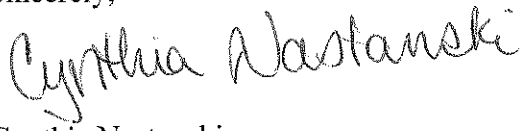
Because the Proposal seeks an evaluation of risks, and because the underlying subject matters of those risks are matters of ordinary business to the Company, the Proposal may be excluded under Rule 14a-8(i)(7).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2012 Proxy Materials under Rule 14a-8(i)(7).

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. If we can be of any further assistance in this matter, please do not hesitate to call me at (914) 253-3271, or Elizabeth Ising of Gibson, Dunn & Crutcher LLP at (202) 955-8287.

Sincerely,



Cynthia Nastanski
Senior Vice President, Corporate Law
and Office of the Corporate Secretary

cc: Betsy Krieger
Sanford Lewis
T.J. Faircloth, Corporate Accountability International

EXHIBIT A

received 11/23

Betsy Krieger

*** FISMA & OMB Memorandum M-07-16 ***

Maura Abeln Smith, Corporate Secretary
PepsiCo, Inc.
700 Anderson Hill Road
Purchase, NY 10577

Re: Risk Oversight Committee Shareholder Resolution

November 21, 2011

Dear Ms. Smith:

I have growing concerns regarding the lack of board level oversight of the risks facing our company. Although risk assessment and management are part of the duties assigned to the Board of Directors' Audit Committee, this committee cannot possibly give due time and effort to these tasks because of the number and scope of the duties already within its jurisdiction. This is not suitable for the number and severity of the risks facing our company, and puts it and its shareholders in a very precarious position.

As a food and beverage company, risks related to product quality intermingle with reputation, liability and public health risks. For instance, I am aware that our Aquafina bottled water is sourced from public water systems. However, the risks to our company regarding water quality relate to potential contamination of those water supplies, consumer concerns about the degree to which our bottling process enhances quality beyond that of the public supplies, and risks of contamination in the bottling process. Since we do not provide the public with consistent and up to date information about the quality of our Aquafina brand bottled water, I question whether our company is vulnerable to legal liability and reputational risks. I want to be sure that the Board is overseeing such risks.

Therefore, I am submitting the enclosed shareholder proposal for inclusion in the 2012 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. I am the beneficial owner, as defined in Rule 13d-3 of the Securities Exchange Act of 1934, of at least 200 shares of PepsiCo stock. I have held more than 200 shares continuously for the past year, which has exceeded $2,000 in value throughout the year, and will forward verification of my ownership. I will continue to hold all the shares through the next shareholders' meeting. My representative or I will attend the shareholders' meeting to move the resolution as required by the SEC rules.

In addition, please copy all correspondence related to this proposal to my legal counsel, Sanford Lewis, P.O. Box 231, Amherst, MA 01004-0231 and to T.J. Faircloth, Corporate Accountability International, 10 Milk Street, Suite 610, Boston, MA 02018. Thank you.

Sincerely,

Betsy Krieger

Risk Oversight Committee

WHEREAS:

Our Company's SEC form 10-K issued February 2011 identified a multitude of risks to shareholders, for instance:

- Demand for our products may be adversely affected by changes in consumer preferences and tastes if we are unable to anticipate or react to such changes, eroding our competitive and financial position. The report notes that relevant trends include among other things increasing consumer focus on health and wellness, as well as product attributes and ingredients.
- Any damage to our reputation could have an adverse effect on our business, financial condition and results of operations. This includes concerns about standards for product quality as well as recalls and product liabilities.
- Changes in the legal and regulatory environment could reduce demand for our products or result in litigation.
- Disruption of the supply chain could have an adverse effect on our business, financial condition and results of operations.
- Our financial performance could suffer if we are unable to compete effectively.

These and other risks, such as problems regarding bottled water quality, could negatively impact our Company's reputation and operations, including customer satisfaction and loyalty, our distribution network, market share, revenue, legal action, competitive position, and ability of our customers to pay.

At the management level, oversight of these risks is assigned to a management committee on risk management. However at the Board level, the oversight of these risks is virtually lost among the dozens of tasks that the Board's Audit Committee must undertake. The four-page Audit Committee Charter, effective November 11, 2010, describes in detail the tasks of the committee with regard to overseeing the firm's auditors. For instance:

"18. Establish and maintain hiring policies for employees or former employees of independent auditors.
19. Review the audit plans and activities of the independent auditors and the internal auditors, and the coordination of their audit efforts.
20. Review and approve the performance, appointment or replacement of the Corporation's senior-most internal auditor.
21. Review the internal audit department's staffing, budget and responsibilities."

In contrast, risk management oversight merits a single line in the Audit Committee Charter to, "17. Discuss the guidelines and policies with respect to the Corporation's risk assessment and risk management processes."

The proponent believes that these issues of risk oversight are of equal importance to the Audit Committee's work and therefore merit a separate Board committee, with focused attention and a detailed agenda of risk oversight.

RESOLVED: Shareholders request that the company establish a Risk Oversight Committee of the Board of Directors.

PEPSICO

AMY E. CARRIELLO
SENIOR LEGAL DIRECTOR
Tel: 914-253-2507
Fax: 914-249-8109
amy.carriello@pepsico.com

November 30, 2011

Betsy Krieger

*** FISMA & OMB Memorandum M-07-16 ***

Re: ***Shareholder Proposal for PepsiCo's 2012 Proxy Statement***

Dear Ms. Krieger:

I am in receipt of your shareholder proposal entitled "Risk Oversight Committee" for consideration at PepsiCo, Inc.'s (the "Company's") 2012 Annual Meeting of Shareholders (the "Proposal").

In accordance with Securities and Exchange Commission ("SEC") regulations, please provide me with evidence of your ownership of the Company's common stock. Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that shareholder proponents must submit sufficient proof of their continuous ownership of at least $2,000 in market value, or 1%, of a company's shares entitled to vote on the proposal for at least one year as of the date the shareholder proposal was submitted. To date, we have not received proof that you have satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to the Company.

To remedy this, you must submit sufficient proof of your ownership of the requisite number of Company shares as of the date that the Proposal was submitted to the Company. As explained in Rule 14a-8(b), sufficient proof must be in the form of:

(1) a written statement from the "record" holder of your shares (usually a broker or a bank) verifying that, as of the date the Proposal was submitted, you continuously held the requisite number of Company shares for at least one year; or

(2) if you have filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the requisite number of Company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that you continuously held the requisite number of Company shares for the one-year period.

If you intend to demonstrate ownership by submitting a written statement from the "record" holder of your shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether your broker or bank is a DTC participant by asking your broker or bank or by checking DTC's participant list, which is available at http://www.dtcc.com/downloads/membership/directories/dtc/alpha.pdf. In these situations, shareholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

(1) If your broker or bank is a DTC participant, then you need to submit a written statement from your broker or bank verifying that, as of the date the Proposal was submitted, you continuously held the requisite number of Company shares for at least one year.

(2) If your broker or bank is not a DTC participant, then you need to submit proof of ownership from the DTC participant through which the shares are held verifying that, as of the date the Proposal was submitted, you continuously held the requisite number of Company shares for at least one year. You should be able to find out the identity of the DTC participant by asking your broker or bank. If your broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through your account statements, because the clearing broker identified on your account statements will generally be a DTC participant. If the DTC participant that holds your shares is not able to confirm your individual holdings but is able to confirm the holdings of your broker or bank, then you need to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, as of the date the Proposal was submitted, the requisite number of Company shares were continuously held for at least one year: (i) one from your broker or bank confirming your ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

The SEC's rules require that your response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at the address above. Alternatively, you may transmit any response by facsimile to me at 914-249-8109.

If you have any questions with respect to the foregoing, please contact me at 914-253-2507. For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F.

Sincerely,

cc: Sanford Lewis
T.J. Faircloth, Corporate Accountability International

Rule 14a-8 -- Proposals of Security Holders

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and- answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

a. Question 1: What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

b. Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?

1. In order to be eligible to submit a proposal, you must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

2. If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

i. The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

ii. The second way to prove ownership applies only if you have filed a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

A. A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;

B. Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

C. Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

c. Question 3: How many proposals may I submit: Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

d. Question 4: How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

e. Question 5: What is the deadline for submitting a proposal?

1. If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10- Q or 10-QSB, or in shareholder reports of investment companies under Rule 30d-1 of the Investment Company Act of 1940. [Editor's note: This section was redesignated as Rule 30e-1. See 66 FR 3734, 3759, Jan. 16, 2001.] In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

2. The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and sends its proxy materials.

3. If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and sends its proxy materials.

f. Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?

1. The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied,

such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under Rule 14a-8 and provide you with a copy under Question 10 below, Rule 14a-8(j).

2. If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

g. Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

h. Question 8: Must I appear personally at the shareholders' meeting to present the proposal?

1. Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

2. If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

3. If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

i. Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?

1. Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

Note to paragraph (i)(1)

Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

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2. Violation of law: If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

Note to paragraph (i)(2)

Note to paragraph (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law could result in a violation of any state or federal law.

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3. Violation of proxy rules: If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a--9, which prohibits materially false or misleading statements in proxy soliciting materials;

4. Personal grievance; special interest: If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

5. Relevance: If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earning sand gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

6. Absence of power/authority: If the company would lack the power or authority to implement the proposal;

7. *Management functions: If the proposal deals with a matter relating to the company's ordinary business operations;*

8. Relates to election: If the proposal

   i. Would disqualify a nominee who is standing for election;

   ii. Would remove a director from office before his or her term expired;

   iii. Questions the competence, business judgment, or character of one or more nominees or directors;

   iv. Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

   v. Otherwise could affect the outcome of the upcoming election of directors.

9. Conflicts with company's proposal: If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting.

Note to paragraph (i)(9)

Note to paragraph (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

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10. Substantially implemented: If the company has already substantially implemented the proposal;

Note to paragraph (i)(10)

Note to paragraph (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-21(b) of this chapter a single year (i.e., one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-21(b) of this chapter.

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11. Duplication: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

12. Resubmissions: If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

    i. Less than 3% of the vote if proposed once within the preceding 5 calendar years;

    ii. Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or

    iii. Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

13. Specific amount of dividends: If the proposal relates to specific amounts of cash or stock dividends.

j. Question 10: What procedures must the company follow if it intends to exclude my proposal?

1. If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

2. The company must file six paper copies of the following:

   i. The proposal;

   ii. An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

   iii. A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

k. Question 11: May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

l. Question 12: If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

1. The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

2. The company is not responsible for the contents of your proposal or supporting statement.

m. Question 13: What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

1. The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

2. However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti- fraud rule, Rule 14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating

the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

3. We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

   i. If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

   ii. In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under Rule 14a-6.

U.S. Securities and Exchange Commission

Division of Corporation Finance
Securities and Exchange Commission

Shareholder Proposals

Staff Legal Bulletin No. 14F (CF)

Action: Publication of CF Staff Legal Bulletin

Date: October 18, 2011

Summary: This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

Supplementary Information: The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

Contacts: For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at https://tts.sec.gov/cgi-bin/corp_fin_interpretive.

A. The purpose of this bulletin

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- Brokers and banks that constitute "record" holders under Rule 14a-8 (b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- Common errors shareholders can avoid when submitting proof of ownership to companies;
- The submission of revised proposals;
- Procedures for withdrawing no-action requests regarding proposals submitted by multiple proponents; and
- The Division's new process for transmitting Rule 14a-8 no-action responses by email.

You can find additional guidance regarding Rule 14a-8 in the following

bulletins that are available on the Commission's website: SLB No. 14, SLB No. 14A, SLB No. 14B, SLB No. 14C, SLB No. 14D and SLB No. 14E.

B. The types of brokers and banks that constitute "record" holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

1. Eligibility to submit a proposal under Rule 14a-8

To be eligible to submit a shareholder proposal, a shareholder must have continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.[1]

The steps that a shareholder must take to verify his or her eligibility to submit a proposal depend on how the shareholder owns the securities. There are two types of security holders in the U.S.: registered owners and beneficial owners.[2] Registered owners have a direct relationship with the issuer because their ownership of shares is listed on the records maintained by the issuer or its transfer agent. If a shareholder is a registered owner, the company can independently confirm that the shareholder's holdings satisfy Rule 14a-8(b)'s eligibility requirement.

The vast majority of investors in shares issued by U.S. companies, however, are beneficial owners, which means that they hold their securities in book-entry form through a securities intermediary, such as a broker or a bank. Beneficial owners are sometimes referred to as "street name" holders. Rule 14a-8(b)(2)(i) provides that a beneficial owner can provide proof of ownership to support his or her eligibility to submit a proposal by submitting a written statement "from the 'record' holder of [the] securities (usually a broker or bank)," verifying that, at the time the proposal was submitted, the shareholder held the required amount of securities continuously for at least one year.[3]

2. The role of the Depository Trust Company

Most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency acting as a securities depository. Such brokers and banks are often referred to as "participants" in DTC.[4] The names of these DTC participants, however, do not appear as the registered owners of the securities deposited with DTC on the list of shareholders maintained by the company or, more typically, by its transfer agent. Rather, DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants. A company can request from DTC a "securities position listing" as of a specified date, which identifies the DTC participants having a position in the company's securities and the number of securities held by each DTC participant on that date.[5]

3. Brokers and banks that constitute "record" holders under Rule

14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a "record" holder for purposes of Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.[6] Instead, an introducing broker engages another broker, known as a "clearing broker," to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC's securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent's records or against DTC's securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8[7] and in light of the Commission's discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered "record" holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants' positions in a company's securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

We believe that taking this approach as to who constitutes a "record" holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,[8] under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

Companies have occasionally expressed the view that, because DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants, only DTC or Cede & Co. should be viewed as the "record" holder of the securities held on deposit at DTC for purposes of Rule 14a-8(b)(2)(i). We have never interpreted the rule to require a shareholder to obtain a proof of ownership letter from DTC or Cede & Co., and nothing in this guidance should be construed as changing that view.

How can a shareholder determine whether his or her broker or bank is a DTC participant?

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC's participant list, which is currently available on the Internet at http://www.dtcc.com/downloads/membership/directories/dtc/alpha.pdf.

What if a shareholder's broker or bank is not on DTC's participant list?

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder's broker or bank.[9]

If the DTC participant knows the shareholder's broker or bank's holdings, but does not know the shareholder's holdings, a shareholder could satisfy Rule 14a-8(b)(2)(i) by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of securities were continuously held for at least one year – one from the shareholder's broker or bank confirming the shareholder's ownership, and the other from the DTC participant confirming the broker or bank's ownership.

How will the staff process no-action requests that argue for exclusion on the basis that the shareholder's proof of ownership is not from a DTC participant?

The staff will grant no-action relief to a company on the basis that the shareholder's proof of ownership is not from a DTC participant only if the company's notice of defect describes the required proof of ownership in a manner that is consistent with the guidance contained in this bulletin. Under Rule 14a-8(f)(1), the shareholder will have an opportunity to obtain the requisite proof of ownership after receiving the notice of defect.

C. Common errors shareholders can avoid when submitting proof of ownership to companies

In this section, we describe two common errors shareholders make when submitting proof of ownership for purposes of Rule 14a-8(b)(2), and we provide guidance on how to avoid these errors.

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least $2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal" (emphasis added).[10] We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date *before* the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full

one-year period preceding the date of the proposal's submission.

Second, many letters fail to confirm continuous ownership of the securities. This can occur when a broker or bank submits a letter that confirms the shareholder's beneficial ownership only as of a specified date but omits any reference to continuous ownership for a one-year period.

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals. Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

> "As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities]."[11]

As discussed above, a shareholder may also need to provide a separate written statement from the DTC participant through which the shareholder's securities are held if the shareholder's broker or bank is not a DTC participant.

D. The submission of revised proposals

On occasion, a shareholder will revise a proposal after submitting it to a company. This section addresses questions we have received regarding revisions to a proposal or supporting statement.

1. A shareholder submits a timely proposal. The shareholder then submits a revised proposal before the company's deadline for receiving proposals. Must the company accept the revisions?

Yes. In this situation, we believe the revised proposal serves as a replacement of the initial proposal. By submitting a revised proposal, the shareholder has effectively withdrawn the initial proposal. Therefore, the shareholder is not in violation of the one-proposal limitation in Rule 14a-8 (c).[12] If the company intends to submit a no-action request, it must do so with respect to the revised proposal.

We recognize that in Question and Answer E.2 of SLB No. 14, we indicated that if a shareholder makes revisions to a proposal before the company submits its no-action request, the company can choose whether to accept the revisions. However, this guidance has led some companies to believe that, in cases where shareholders attempt to make changes to an initial proposal, the company is free to ignore such revisions even if the revised proposal is submitted before the company's deadline for receiving shareholder proposals. We are revising our guidance on this issue to make clear that a company may not ignore a revised proposal in this situation.[13]

2. A shareholder submits a timely proposal. After the deadline for receiving proposals, the shareholder submits a revised proposal. Must the company accept the revisions?

No. If a shareholder submits revisions to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to accept the revisions. However, if the company does not accept the revisions, it must treat the revised proposal as a second proposal and submit a notice stating its intention to exclude the revised proposal, as required by Rule 14a-8(j). The company's notice may cite Rule 14a-8(e) as the reason for excluding the revised proposal. If the company does not accept the revisions and intends to exclude the initial proposal, it would also need to submit its reasons for excluding the initial proposal.

3. If a shareholder submits a revised proposal, as of which date must the shareholder prove his or her share ownership?

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,[14] it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder "fails in [his or her] promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of [the same shareholder's] proposals from its proxy materials for any meeting held in the following two calendar years." With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.[15]

E. Procedures for withdrawing no-action requests for proposals submitted by multiple proponents

We have previously addressed the requirements for withdrawing a Rule 14a-8 no-action request in SLB Nos. 14 and 14C. SLB No. 14 notes that a company should include with a withdrawal letter documentation demonstrating that a shareholder has withdrawn the proposal. In cases where a proposal submitted by multiple shareholders is withdrawn, SLB No. 14C states that, if each shareholder has designated a lead individual to act on its behalf and the company is able to demonstrate that the individual is authorized to act on behalf of all of the proponents, the company need only provide a letter from that lead individual indicating that the lead individual is withdrawing the proposal on behalf of all of the proponents.

Because there is no relief granted by the staff in cases where a no-action request is withdrawn following the withdrawal of the related proposal, we recognize that the threshold for withdrawing a no-action request need not be overly burdensome. Going forward, we will process a withdrawal request if the company provides a letter from the lead filer that includes a representation that the lead filer is authorized to withdraw the proposal on behalf of each proponent identified in the company's no-action request.[16]

F. Use of email to transmit our Rule 14a-8 no-action responses to companies and proponents

To date, the Division has transmitted copies of our Rule 14a-8 no-action responses, including copies of the correspondence we have received in connection with such requests, by U.S. mail to companies and proponents.

We also post our response and the related correspondence to the Commission's website shortly after issuance of our response.

In order to accelerate delivery of staff responses to companies and proponents, and to reduce our copying and postage costs, going forward, we intend to transmit our Rule 14a-8 no-action responses by email to companies and proponents. We therefore encourage both companies and proponents to include email contact information in any correspondence to each other and to us. We will use U.S. mail to transmit our no-action response to any company or proponent for which we do not have email contact information.

Given the availability of our responses and the related correspondence on the Commission's website and the requirement under Rule 14a-8 for companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response. Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission's website copies of this correspondence at the same time that we post our staff no-action response.

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[1] *See* Rule 14a-8(b).

[2] For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term "beneficial owner" does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to "beneficial owner" and "beneficial ownership" in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. *See* Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").

[3] If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(2)(ii).

[4] DTC holds the deposited securities in "fungible bulk," meaning that there are no specifically identifiable shares directly owned by the DTC participants. Rather, each DTC participant holds a pro rata interest or position in the aggregate number of shares of a particular issuer held at DTC. Correspondingly, each customer of a DTC participant – such as an individual investor – owns a pro rata interest in the shares in which the DTC

participant has a pro rata interest. *See* Proxy Mechanics Concept Release, at Section II.B.2.a.

[5] *See* Exchange Act Rule 17Ad-8.

[6] *See* Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] ("Net Capital Rule Release"), at Section II.C.

[7] *See KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden,* 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the company's non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

[8] *Techne Corp.* (Sept. 20, 1988).

[9] In addition, if the shareholder's broker is an introducing broker, the shareholder's account statements should include the clearing broker's identity and telephone number. *See* Net Capital Rule Release, at Section II.C.(iii). The clearing broker will generally be a DTC participant.

[10] For purposes of Rule 14a-8(b), the submission date of a proposal will generally precede the company's receipt date of the proposal, absent the use of electronic or other means of same-day delivery.

[11] This format is acceptable for purposes of Rule 14a-8(b), but it is not mandatory or exclusive.

[12] As such, it is not appropriate for a company to send a notice of defect for multiple proposals under Rule 14a-8(c) upon receiving a revised proposal.

[13] This position will apply to all proposals submitted after an initial proposal but before the company's deadline for receiving proposals, regardless of whether they are explicitly labeled as "revisions" to an initial proposal, unless the shareholder affirmatively indicates an intent to submit a second, *additional* proposal for inclusion in the company's proxy materials. In that case, the company must send the shareholder a notice of defect pursuant to Rule 14a-8(f)(1) if it intends to exclude either proposal from its proxy materials in reliance on Rule 14a-8(c). In light of this guidance, with respect to proposals or revisions received before a company's deadline for submission, we will no longer follow *Layne Christensen Co.* (Mar. 21, 2011) and other prior staff no-action letters in which we took the view that a proposal would violate the Rule 14a-8(c) one-proposal limitation if such proposal is submitted to a company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

[14] *See, e.g.*, Adoption of Amendments Relating to Proposals by Security Holders, Release No. 34-12999 (Nov. 22, 1976) [41 FR 52994].

[15] Because the relevant date for proving ownership under Rule 14a-8(b) is the date the proposal is submitted, a proponent who does not adequately prove ownership in connection with a proposal is not permitted to submit another proposal for the same meeting on a later date.

[16] Nothing in this staff position has any effect on the status of any shareholder proposal that is not withdrawn by the proponent or its authorized representative.

http://www.sec.gov/interps/legal/cfslb14f.htm

ATTN: Amy Carriello

Please find the following information you requested concerning Betsy Krieger's shareholder resolution filed Nov 23, 2011. Please contact John Skinner at Corporate Accountability International, 617-695-2525 with any questions.

charles SCHWAB
ADVISOR SERVICES

November 23, 2011

Pepsico
Attn: Amy Carriello
700 Anderson Hill Road
Purchase, NY 10577

Dear Ms. Carriello:

Charles Schwab & Company, Inc. is custodian for Betsy Krieger with Wetherby Asset Management as the manager for this portfolio.

We are writing to verify that Betsy Krieger currently owns 219 shares of PepsiCo (Cusip #713448108). We confirm that Betsy Krieger has beneficial ownership of at least $2,000 in market value of the voting securities of PepsiCo and that such beneficial ownership has existed for one or more years from today's date in accordance with rule 14a-8(a)(1) of the Securities Exchange Act of 1934.

In addition, we confirm that we are a DTC participant.

Should you require further information, please contact me directly at 888-538-2787.

Sincerely,

Keith A. Sorel

Keith A. Sorel
Sr. Relationship Specialist II
Charles Schwab & Co., Inc.